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Beazley Underwriting Ltd

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BEAZLEY UNDERWRITING LTD, a
foreign corporation,

Plaintiff,

v.

JUMPER MAN PARTY RENTALS,
LLC, a Nevada limited liability
company,

Defendant.

Case No. 2:22-cv-1884

**COMPLAINT FOR
DECLARATORY RELIEF AND
RECOUPMENT**

**(1) Declaratory Relief – No Duty to
Defend – Policy Section XXX;
(2) Declaratory Relief – No Duty to
Indemnify – Policy Section XXX;
(3) Declaratory Relief – No Duty to
Defend – Policy Section XXXII;
(4) Declaratory Relief – No Duty to
Indemnify – Policy Section XXXII;
(5) Recoupment**

Plaintiff Beazley Underwriting Ltd (“Beazley”) brings this Complaint against
defendant Jumper Man Party Rentals, LLC (“Jumper Man”).

JURISDICTION AND VENUE

1
2 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §
3 1332. There is complete diversity between parties, and the amount in controversy
4 exceeds the sum of \$75,000, exclusive of interest and costs.

5 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2) since
6 a substantial part of the events or omissions giving rise to the claims at issue
7 occurred in this District.

THE PARTIES

8
9 3. Beazley is the lead underwriter of the subject Event Liability Claims
10 Made and Reported Insurance Policy that was underwritten by members of Lloyd's
11 Syndicates 2623/623. Beazley is a company incorporated in England and Wales
12 with its principal place of business in the United Kingdom, and is the sole member
13 of Syndicate 2623. Beazley is suing in its name only as the lead underwriter of the
14 subject insurance Policy, but a determination in this action will be binding on all of
15 the Policy's underwriters ("Underwriters").

16 4. Jumper Man is a limited liability company organized and existing
17 under Nevada law with its principal place of business in Las Vegas, Nevada. Upon
18 information and belief, all of the members of Jumper Man are individuals residing
19 in the state of Nevada. As such, Jumper Man is a citizen of Nevada.

INTRODUCTION

20
21 5. This is an action by Beazley seeking declarations concerning the rights
22 and obligations of the parties under Event Liability Claims Made and Reported
23 Insurance Policy No. ZISMB1227 issued to Jumper Man for the July 8, 2020 to
24 July 8, 2021 Policy Period (the "Policy") in connection with bodily injury claims
25 (collectively, the "Bodily Injury Claim") arising out of an April 30, 2021 event in
26 Henderson, Nevada involving a "trackless train" rented from and operated by
27 Jumper Man (the "Event").
28

1 6. In this Complaint, Beazley seeks, among things, a judgment (1)
2 declaring that no coverage is afforded under the Policy for the Bodily Injury Claim;
3 (2) declaring that there is no duty to defend or indemnify Jumper Man under the
4 Policy in connection with the Bodily Injury Claim; and (3) awarding the amounts
5 paid in defense of Jumper Man in connection with the Bodily Injury Claim.

6 **FACTUAL BACKGROUND**

7 **The Bodily Injury Claim**

8 7. On April 30, 2021, Josh Zwagil hosted a birthday party at his home in
9 Henderson, Nevada. Jumper Man supplied a “trackless train” for the party. Four
10 members of the Zwagil family and five members of another family boarded the
11 train and arranged themselves behind the attendant in the “trackless train’s” three
12 cars. The train allegedly rolled over during operation and the occupants were
13 purportedly injured.

14 8. By email dated May 6, 2021 from Josh Zwagil to Jumper Man, Josh
15 Zwagil alleged that the trackless train rolled over and crushed several of its
16 occupants after Jumper Man’s driver decided to take the train down a steep decline.
17 Josh Zwagil requested Jumper Man’s insurance information and stated that he
18 would hand the matter over to his attorney if he did not receive the insurance
19 information within 48 hours.

20 9. Counsel for the injured parties issued a demand letter dated May 13,
21 2022 on behalf of two of the claimants and stated that demands as to the other
22 claimants would be submitted at a later date. The amount of the alleged damages as
23 to the two initial claimants exceeds \$75,000.

24 10. Section 4.04.020(a) of the Henderson municipal code provides that
25 “[i]t shall be a violation of the provisions of this title and unlawful for any person to
26 commence, carry on, engage in or continue in the city any business without first
27 obtaining a license and paying the appropriate license fee as provided by terms and
28 provisions of this title.”

11. At the time of the Event on April 30, 2021, Jumper Man's business license in the city of Henderson, Nevada had expired as of October 31, 2020 and had not been renewed.

The Policy

12. Underwriters issued Event Liability Claims Made and Reported Insurance Policy No. ZISMB1227 to Jumper Man for the July 8, 2020 to July 8, 2021 Policy Period (the "Policy"). A copy of the Policy (without the Policy Application and with confidential premium information redacted) is attached hereto as **Exhibit "A."**

13. Subject to the Policy's other terms and conditions, the Policy's relevant Insuring Agreement (Insuring Agreement A.1.) provides:

Bodily Injury and Property Damage

The Underwriters will pay on behalf of the **Insured, Damages and Claims Expenses** which the **Insured** shall become legally obligated to pay because of any **Claim** or **Claims** for **Bodily Injury** or **Property Damage** to which the coverage applies caused by an **Accident**. This insurance applies only if:

a) The **Accident** occurs on or after the Retroactive Date set forth in Item 12 of the Declarations, occurs only while the **Insured** is engaged in a **Covered Activity** and takes place in the **Coverage Territory**; and

b) The **Bodily Injury** and/or **Property Damage** occurs during the **Policy Period** set forth in Item 2 of the Declarations, occurs only while the **Insured** is engaged in a **Covered Activity** and takes place in the **Coverage Territory**; and

c) A **Claim** or **Claims** for **Damages** because of the **Bodily Injury** or **Property Damage** is first made against the **Insured** during the **Policy Period** and reported in writing to the Underwriters during the **Policy Period** or any applicable **Extended Reporting Period**.

14. The Policy defines Claim to mean “a written notice received by the **Insured** of an intention to hold the **Insured** responsible for compensation for **Damages**, including the service of suit or institution of arbitration proceedings against the **Insured**.” Policy Section VI.(f).

15. The Policy defines **Bodily Injury** as a “physical injury (including death resulting therefrom), sickness, disease or disability. **Bodily Injury** shall not mean mental injury, mental illness, mental anguish, humiliation, emotional upset, shock or other similar condition.” Policy Section VI.(e).

16. The Policy defines **Accident** to mean “an unintended and unexpected event, including continuous or repeated exposure to substantially the same general harmful conditions, and involves one or more persons or entities, taking place on or after the Retroactive Date stated in Item [] of the Declarations and **Covered Activity**.” Policy Section VI.(a). The Policy’s Retroactive Date is July 8, 2020. Policy, Declarations Item 12.

17. The Policy defines **Covered Activities** as those activities specified in Item 11 of the Declarations. Policy Section VI.(h). Declarations Item 11 lists the “Covered Activities” as “Operation of Scheduled Entertainment Devices”. The Jumper Man Party Rentals 2020 Inventory lists as Item #114 “Trackless Train”.

18. Policy Section XXX. LICENSURE provides that:

A. It is a condition precedent to the coverage afforded under the Policy that the facilities of the **Named Insured** and any **Insured** requiring a license to practice or carry out any event shall be

1 licensed in accordance with all relevant federal, state and local
2 requirements. The **Named Insured** warrants that as of the
3 inception date of this Policy it has secured all relevant licenses.

4
5 B. If, during the **Policy Period**, any **Insured's** licensure status is
6 altered by withdrawal, revocation, denial, suspension or failure to
7 renew, the **Named Insured** shall give written notice of such
8 change to the Underwriters within thirty days of the change
9 becoming effective. Following receipt of such notice, the
10 Underwriters may elect, at their sole option, to revise any Insuring
11 Agreements[,] Definitions, Exclusions, Endorsements or other
12 Conditions of this Policy with respect to the **Insured**, with effect
13 from such date of such withdrawal, revocation, denial, suspension
14 or failure to renew. Such action does not waive the Underwriters'
15 option to invoke the provisions of Section XX Cancellation of this
16 Policy. Furthermore, the Underwriters will have no obligation to
17 respond to any **Claim** arising out of an any one fire or an **Accident**
18 or an offense which took place subsequent to the date the of
19 withdrawal, revocation, denial, suspension or failure to renew.

20 19. Policy Section XXXIII. WARRANTIES provides, in relevant part:

21 By acceptance of this policy, the **Insured** warrants that the **Insured**:

22
23 a) observes and complies with the requirements of any law,
24 ordinance, court or regulatory body of whatever jurisdiction.

25
26 b) ensures that all necessary contractual arrangements have
27 been made and confirmed in writing with the **Insured** and that all
28 necessary authorisations (which for the avoidance of doubt shall

1 include, but not be limited to, the obtaining of licences, permits,
2 visas, copyright and patents) are obtained in a timely manner and
3 valid for the period of the **Covered Activity**.

4 c) ensures that mechanical bulls used in any **Covered Activity**
5 comply with both equipment and operational standards that would
6 be considered standard for the industry;

7
8 d) basic safety rules are posted where all participants as well as
9 bystander can see them and comply with them; ...

10 20. Jumper Man tendered the Bodily Injury Claim for coverage under the
11 Policy.

12 21. Underwriters agreed to defend Jumper Man in connection with the
13 Bodily Injury Claim, subject to a full reservation of rights under the Policy,
14 including all rights to recoup defense costs to the extent there is no coverage under
15 the Policy for the Bodily Injury Claim.

16 COUNT I

17 **(Declaratory Relief – No Duty to Defend – Policy Section XXX)**

18 22. Beazley repeats and incorporates by reference the allegations in
19 paragraphs 1 through 21 of the Complaint.

20 23. As a condition precedent to coverage, Policy Section XXX required
21 Jumper Man to warrant that as of the inception date of the Policy it had secured all
22 relevant licenses required to practice or carry out an event. Further, under Policy
23 Section XXX, if any relevant license required to practice or carry out an event was
24 withdrawn, revoked, denied, suspended, or not renewed during the Policy Period,
25 Underwriters have no obligation to respond to any **Claim** arising out of a
26 subsequent **Accident**.
27
28

1 40. An actual, present, and bona fide justiciable controversy exists
2 between Beazley, on the one hand, and Jumper Man, on the other, regarding
3 Underwriters' obligations under the Policy insofar as Beazley contends that
4 Underwriters have no duty to defend Jumper Man in connection with the Bodily
5 Injury Claim due to Jumper Man's failure to comply with the requirements of
6 Policy Section XXXIII while, upon information and belief, Jumper Man contends
7 otherwise.

8 41. A judicial declaration is necessary to establish the parties' rights and
9 duties, if any, under the Policy.

10 42. Beazley is entitled to a declaration that Underwriters have no duty to
11 defend Jumper Man in connection with the Bodily Injury Claim due to Jumper
12 Man's failure to comply with the requirements of Policy Section XXXIII.

13 COUNT IV

14 **(Declaratory Relief – No Duty to Indemnify – Policy Section XXXII)**

15 43. Beazley repeats and incorporates by reference the allegations in
16 paragraphs 1 through 42 of the Complaint.

17 44. Pursuant to Policy Section XXXIII, by accepting the Policy, Jumper
18 Man warranted, among other things, that it observed and complied with all legal
19 requirements of the jurisdictions it operated in and that it obtained all necessary
20 licenses, permits, and other authorizations for its operations.

21 45. Jumper Man was required to maintain a business license with the city
22 of Henderson in order to carry out the Event.

23 46. When the Event occurred on April 30, 2021, Jumper Man's business
24 license with the city of Henderson had expired as of October 31, 2020.

25 47. An actual, present, and bona fide justiciable controversy exists
26 between Beazley, on the one hand, and Jumper Man, on the other, regarding
27 Underwriters' obligations under the Policy insofar as Beazley contends that
28 Underwriters have no duty to indemnify Jumper Man in connection with the Bodily

1 Injury Claim due to Jumper Man's failure to comply with the requirements of
2 Policy Section XXXIII while, upon information and belief, Jumper Man contends
3 otherwise.

4 48. A judicial declaration is necessary to establish the parties' rights and
5 duties, if any, under the Policy.

6 49. Beazley is entitled to a declaration that Underwriters have no duty to
7 indemnify Jumper Man in connection with the Bodily Injury Claim due to Jumper
8 Man's failure to comply with the requirements of Policy Section XXXIII.

9 **COUNT V**

10 **(Recoupment/Restitution/Unjust Enrichment)**

11 50. Beazley repeats and incorporates by reference the allegations in
12 paragraphs 1 through 49 of the Complaint.

13 51. Underwriters agreed to defend Jumper Man in connection with the
14 Bodily Injury Claim, subject to a full reservation of rights, including but not limited
15 to the right to recoup from Jumper Man any and all defense costs if it is determined
16 that no coverage is afforded for the Bodily Injury Claim.

17 52. No coverage is afforded under the Policies for the Bodily Injury Claim
18 pursuant to Policy Sections XXX and XXXII. Underwriters therefore do not have a
19 duty to defend Jumper Man in connection with the Bodily Injury Claim and never
20 had a duty to defend Jumper Man in connection with that claim. Accordingly,
21 amounts paid by Underwriters in defense of the Bodily Injury Claim are not and
22 were not owed by Underwriters under the Policy, and Underwriters are therefore
23 entitled to recoup such amounts from Jumper Man. It would be unjust and
24 inequitable to allow Jumper Man to keep the benefit of amounts paid under the
25 Policy for which it was not entitled, and so Underwriters are entitled as a matter of
26 law and equity to recoup payments under the Policy from Jumper Man.

27 53. Because the Policies do not provide coverage for Jumper Man in
28 connection with the Bodily Injury Claim, Beazley is entitled to an order requiring

1 Jumper Man to make restitution (as keeping such benefits would be unjust) and to
2 reimburse all amounts paid under the Policy in connection with the Bodily Injury
3 Claim, including prejudgment interest thereon.

4 54. An actual and justiciable controversy exists between Beazley, on the
5 one hand, and Jumper Man, on the other, regarding the right to recoupment of
6 defense costs paid under the Policy in connection with the Bodily Injury Claim
7 insofar as Beazley contends that there is a right to recoupment of defense costs paid
8 in connection with the Bodily Injury Claim while, upon information and belief,
9 Jumper Man contends otherwise.

10 55. By virtue of the foregoing, Beazley is entitled to a judgment against
11 Jumper Man awarding all amounts paid under the Policy in connection with the
12 Bodily Injury Claim.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Beazley prays for the following relief and for judgment
15 against Jumper Man as follows:

16 **COUNT I**

17 1. A judgment declaring that Underwriters have no obligation to defend
18 Jumper Man in connection with the Bodily Injury Claim pursuant to Policy Section
19 XXX.

20 **COUNT II**

21 2. A judgment declaring that Underwriters have no obligation to
22 indemnify Jumper Man in connection with the Bodily Injury Claim pursuant to
23 Policy Section XXX.

24 **COUNT III**

25 3. A judgment declaring that Underwriters have no obligation to defend
26 Jumper Man in connection with the Bodily Injury Claim pursuant to Policy Section
27 XXXIII.
28

COUNT IV

4. A judgment declaring that Underwriters have no obligation to indemnify Jumper Man in connection with the Bodily Injury Claim pursuant to Policy Section XXXIII.

COUNT V

5. A judgment against Jumper Man awarding all amounts paid under the Policy in connection with the Bodily Injury Claim, including all defense costs incurred in defending that claim, because Underwriters had no duty to defend or pay such amounts under the Policy for the Bodily Injury Claims.

ALL COUNTS

6. For Beazley's costs of suit herein; and

7. For such other relief as this Court deems just and proper.

Dated: November 7, 2022.

**TROUTMAN PEPPER
HAMILTON SANDERS LLP**

By: /s/ Brody R. Wight

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